SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

IN RE COORDINATED BREAST IMPLANT LITIGATION

Plaintiff,

vs.

'21' FOAM COMPANY, INCORPORATED; '21' INTERNATIONAL HOLDINGS, INC.; ADMIRAL MATERIALS CORPORATION; AESTHETECH CORPORATION; AMERICAN HOSPITAL SUPPLY; APPLIED SILICONE CORPORATION; BAXTER HEALTHCARE CORPORATION; BAXTER INTERNATIONAL, INC.; BIOMANUFACTURING, INC.; BIOPLASTY, INC.; BRISTOL-MYERS SQUIBB CO.; CABOT CORPORATION; CBI MEDICAL; CHEM CENTRAL CORPORATION; COOPER ENGINEERING CO.; COOPERSURGICAL, INC.; COOPERVISION, INC.; CORNING, INC.; COX-UPHOFF INTERNATIONAL; CUI CORPORATION; CV SUB 1987, INC.; CVI MERGER CORPORATION; DOW CORNING CORPORATION; DOW CORNING WRIGHT CORPORATION; DICK DULANEY; EDWARD WECK, INC.; BILL FARGIE; FOAMEX PRODUCTS, INC.; FOAMEX, L.P.; GENERAL ELECTRIC COMPANY; HEYER-SCHULTE, INC.; HULS AMERICA; INAMED CORPORATION; INAMED DEVELOPMENT COMPANY; INTERNATIONAL SILICONE CORPORATION; KNOLL INTERNATIONAL HOLDINGS, INC.; KIRK LONG; MARK/M RESOURCES, INC.; MARKHAM MEDICAL; HAROLD MARKHAM; McGHAN MEDICAL CORPORATION McGHAN NUSIL CORPORATION; DONALD McGHAN; SHAWN McGUIRE; MEDICAL ENGINEERING CORPORATION; MEDICAL PRODUCTS, INC.; MEDICORE ORTHOPAEDIC, INC.; MENTOR CORPORATION; MENTOR POLYMER TECHNOLOGIES; MINNESOTA MINING AND MANUFACTURING COMPANY, INC.;

JCCP-2754-0001

COMPLAINT FOR DAMAGES
(Silicone Breast Implant Cases)

1. Strict Product Liability
2. Negligence
3. Breach of Implied Warranty
4. Breach of Express Warranty
5. Deceit
6. Intentional Inflection of Emotional Distress
7. Loss of Consortium
8. Market Share Liability - Pleaded in the Alternative-Product Defendants Only
9. Medical Negligence - Physician Defendants Only
10. Lack of Informed Consent and Battery - Physician Defendants Only

NATURAL Y SURGICAL SPECIALTIES, INC.; NATURAL Y SURGICAL SPECIALTIES, INCORPORATED; PETRARCH SYSTEMS; POLY PLASTICS/SILICONE PRODUCTS, INC.; POLYMER TECHNOLOGIES; RECTICEL FOAM CORP.; JAMES REITSMA; REPLICON LABORATORIES, INC.; SCOTFOAM CORP.; SCOTT PAPER COMPANY; SIROD CORPORATION; SURGITEK, INC.; THE COOPER COMPANIES, INC.; THE DOW CHEMICAL COMPANY; UNION CARBIDE CHEMICALS AND PLASTICS COMPANY, INC.; UNION CARBIDE CORPORATION; UROPLASTY, INC.; WARD WALSH; WILSHIRE TECHNOLOGIES, INC., fka WILSHIRE FOAM PRODUCTS, INC.; and DOES ONE through FIVE HUNDRED, Inclusive,

Defendants.

MASTER COMPLAINT - CALIFORNIA BREAST IMPLANT LITIGATION

GENERAL ALLEGATIONS

1. The true names or capacities, whether individual, corporate, associate or otherwise, of Defendants DOES ONE through FIVE HUNDRED, Inclusive, are unknown to Plaintiff who therefore sues said Defendants by such fictitious names. Plaintiff believes and alleges that each of the Defendants designated herein by fictitious names is in some manner legally responsible for the events and happenings herein referred to and caused damages proximately and foreseeably to Plaintiffs as alleged herein.

2. To the extent that any Defendants not identified in Plaintiff's previously filed Complaint are now identified and included in this Master Complaint, those Defendants are now substituted for "Doe" Defendants named in said previously filed Complaint.

3. At all times herein mentioned, "Defendants" include all "product" Defendants and all "physician" Defendants named herein, unless otherwise specified.

4. At all times herein mentioned, each of the Defendants was the agent, servant, partner, aider and abettor, co-conspirator and/or joint venturer of each of the remaining Defendants herein and were at all times operating and acting within the purpose and scope of said agency, service, employment, partnership, conspiracy and/or joint venture and rendered substantial

assistance and encouragement to the other Defendants, knowing that their conduct constituted a breach of duty.

5. At all times herein mentioned, one or more of the corporate Defendants as, and now is, a corporation with its principal place of business in the State of California.

6. At all times herein mentioned, one or more of the individual Defendants was, and now is, a resident of the State of California.

7. At all times herein mentioned, the product Defendants, and each of them, were engaged in the business of, or were successors in interest to, entities engaged in the business of researching, designing, formulating, compounding, testing, manufacturing, producing, processing, assembling, inspecting, distributing, marketing, labeling, promoting, packaging and/or advertising for sale and selling silicone breast implants and/or their component parts, including but not limited to silica, silicone, silicone gel and polyurethane.

8. At all times herein mentioned, the product Defendants, and each of them, were authorized to do business within the State of California and did in fact supply the aforementioned products within the State of California.

9. At all times herein mentioned, the officers and/or directors of the product Defendants named herein participated in, authorized and/or directed the production and promotion of the aforementioned products when they knew, or with the exercise of reasonable care should have known, of the hazards and dangerous propensities of said products and thereby actively participated in the tortious conduct which resulted in the physical injuries described herein.

10. At all times herein mentioned, the physician Defendants herein, and each of them, were engaged in the business of designing, manufacturing, formulating, distributing, supplying and/or selling silicone breast implants.

11. At all times herein mentioned, said silicone breast implants were never approved by the U.S. Food & Drug Administration (FDA) and were not subject to any FDA performance standards or FDA regulation whatsoever until June 24, 1988, when a final rule, classifying Defendants' breast implants as a Class III medical device, was enacted. 21 C.F.R. §878.3540. A Class III medical device is one in which standards do not exist to provide a reasonable assurance of safety and

effectiveness. 21 U.S.C. §360(c). The Class III classification required each manufacturer to submit a premarket approval application (PMA) to the FDA containing information demonstrating the safety and effectiveness of Defendants' breast implants.

12. Prior to June 24, 1988, the FDA had never regulated Defendants' breast implants by requiring a PMA and Defendants had never submitted any information to the FDA establishing the safety and effectiveness of breast implants.

13. The FDA rejected the premarket approval application of Defendant Dow Corning Corporation in that it did not provide reasonable assurances of the safety of said breast implants. The FDA found the PMA contained data insufficient for modern safety analysis. The FDA refused to accept for filing the PMA of Defendants Bristol Myers-Squibb Company, Surgitek, Inc. and Medical Engineering Corporation.

14. Defendants, and each of them, knew and/or intended that the aforementioned products were to be used for implantation within the human body.

15. Between the years of 1960 to the present, Plaintiff underwent one or more surgeries for the implantation of said silicone breast implants.

16. Prior to the dat eon which the aforementioned products were implanted in Plaintiff, Defendants, and each of them, knew that these products were unsafe in their design and materials for implantation in the human system in that said breast implants had the potential and propensity to rupture, leak and bleed silicone and other toxic materials into the human system by way of dispersal, migration and biodegradation, thereby producing serious and/or life-threatening injuries, immunologic harm, cancer, disfigurement and other damages.

17. Notwithstanding the foregoing knowledge by the Defendants, at all times herein mentioned, Defendants failed to take appropriate action to cure the nature of said defects or to adequately warn users of said products and/or their physicians of said dangerous characteristics and defects.

18. At all times herein mentioned, Defendants have known that the removal of implants can, in some women, ameliorate or lessen the degree of systemic injuries; they have further known that the longer the implants are retained in a woman's body, the more likely that the leakage of toxic

components will migrate and biodegrade, causing irreversible harm, and despite this knowledge they have failed to disseminate this information to or adequately warn governmental agencies, physicians, implant recipients and/or the general public and have continued to advise physicians and the general public that silicone breast implants do not cause any harm, thereby continuing their tortious activities against Plaintiff from the date of her implants to the present.

19. Defendants, and each of them, have participated in the mutual exchange of information concerning the problems, dangers and health risks of silicone implants and have provided information to each other designed to promote the sale of silicone breast implants in general.

20. Plaintiff has sustained and will continue to sustain injuries on a continuing basis, by virtue of the implants in her body from the date of insertion until the date of removal and the residual silicone that has been deposited in her body and is currently present has continued to cause her injuries from the date of removal to the present.

21. The past and future injuries sustained by Plaintiff include but are not limited to some or all of the following: severe damage to her immune system; a wide range of autoimmune diseases and symptoms associated with autoimmune diseases; injuries to her joints, connective tissue and skin; injuries to her primary organs; ruptures; contracture; breast hardening; scarring; deformities; disfigurement; bleeding, leakage and migration of silicone into her bodily systems, tissues and organs; cancer; infection; supplemental surgeries; inability to detect cancerous or potentially cancerous tissue; fear of future injuries; partial or total disability and the inability to work and function; loss of earnings and earning capacity; pain and suffering; mental and physical anguish; memory loss; chronic fatigue; numerous hospital, doctor, medical and other bills and expenses; and severe motional distress and depression.

22. Plaintiff files this lawsuit within one year of first suspecting that said implants were the cause of any appreciable harm sustained by her. Plaintiff could not, by the exercise of reasonable diligence, have discovered the wrongful cause of her injuries at an earlier time because the Defendants herein misrepresented and continue to misrepresent to the public and to the medical profession that these implants are safe.

23. Plaintiff further pleads that any and all limitations statutes applicable to her causes of action alleged herein are tolled by the filing of various class actions.

24. At all times herein mentioned, Defendants, and each of them, (I) knew that the aforementioned products were dangerous and unsafe for implantation in the human system as previously delineated in this Master Complaint; (ii) concealed said dangers and health risks from Plaintiff, physicians and the public in genera; (iii) made misrepresentations to Plaintiff, physicians and the public in general as previously delineated in this Master Complaint; and (iv) with full knowledge of the health risks associated with the aforementioned products and without adequate warnings of same, manufactured, marketed and distributed said products for use by Plaintiff.

25. The foregoing conduct by the Defendants, and each of them, was malicious, fraudulent and oppressive towards Plaintiff and the public and thereby acted despicably and with a willful, wanton and/or conscious and reckless disregard for the safety of Plaintiff and the general public.

26. Defendants, and each of them, directly or by and through an officer, director or managing agent, authorized sales representatives, employees and other agents to engage in the aforesaid conduct and ratified all such activities by said agents.

27. As a result of the foregoing conduct by the Defendants, and each of them, Plaintiff suffered injuries and damage as alleged herein and requests punitive and exemplary damages in such amounts as would punish each Defendant for their conduct and act as an example that would deter them, as well as other companies and members of the same industry, from engaging in similar conduct in the future.

FIRST CAUSE OF ACTION

(Strict Liability In Tort)

28. Plaintiff incorporates by reference herein Paragraphs 1 through 27 as though fully set forth herein.

29. The aforementioned silicone breast implants and their component parts were defective and unreasonably dangerous in design and manufacture.

30. The aforementioned silicone breast implants and their component parts failed to contain adequate warnings concerning the defective condition, characteristics and risks associated with said products, as outlined in the preliminary paragraphs of this Master Complaint.

31. Defendants, and each of them, knew that the aforementioned products would be purchased and used by the purchaser or user without inspection for defects therein or in any of its components as to design, manufacture and warnings.

32. The Defendants, and each of them, knew or should have known of the defective condition, characteristics and risks associated with said products, as outlined in the preliminary paragraphs of this Master Complaint.

33. Plaintiff id not know, nor had reason to know, prior to the use of the aforementioned products of the defective condition of the product.

34. As a result of said defective condition of the aforementioned products, Plaintiff suffered injuries and damage as alleged herein.

SECOND CAUSE OF ACTION

(Negligence)

35. The Plaintiff incorporates by reference herein Paragraphs 1 through 27 as though fully set forth herein.

36. At all times herein mentioned, Defendants, and each of them, had a duty to properly manufacture, design, formulate, compound, test, produce, process, assemble, inspect, research, distribute, market, label, package, prepare for use, sell and adequately warn of the risks and dangers of the aforementioned products.

37. At all times herein mentioned, Defendants, and each of them, negligently and carelessly manufactured, designed, formulated, compounded, produced, processed, assembled, inspected, distributed, marketed, labeled, packaged, prepared for use and sold the aforementioned products and failed to adequately test, research and warn of the risks and dangers of the aforementioned products.

38. As a result of said negligence and carelessness of the Defendants, and each of them, Plaintiff suffered injuries and damage as alleged herein.

THIRD CAUSE OF ACTION

(Breach of Implied Warranty)

39. Plaintiff incorporates by reference herein Paragraphs 1 through 27 as though fully set forth herein.

40. Prior to the time that the aforementioned products were used by Plaintiff, Defendants, and each of them, impliedly warranted to Plaintiff and her agents and physicians that said products were of merchantable quality and safe and fit for the use for which it was intended.

41. Plaintiff was and is unskilled in the research, design and manufacture of the aforementioned products and reasonably relied entirely on the skill, judgment and implied warranty of the Defendants in using the aforementioned products.

42. The aforementioned products were neither safe for their intended use nor of merchantable quality, as warranted by Defendants, in that they had dangerous propensities when put to their intended use and would cause severe injuries to the user.

43. As a result of the aforementioned breach of implied warranties by the Defendants, and each of them, Plaintiff suffered injuries and damages as alleged herein.

FOURTH CAUSE OF ACTION

(Breach of Express Warranty)

44. Plaintiff incorporates by reference herein Paragraphs 1 through 27 as though fully set forth herein.

45. At all times herein mentioned, Defendants expressly warranted to Plaintiff and her agents and physicians, by and through statements made by Defendants or their authorized agents or sales representatives, orally and/or in publications, package inserts or other written materials intended for physicians, medical patients and the general public, that the aforementioned products were safe, effective, fit and proper for their intended use, throughout the course of that use by the implant recipient.

46. In utilizing the aforementioned products, Plaintiff relied on the skill, judgment, representations and foregoing express warranties of the Defendants, and each of them. Said warranties and representations were false in that the aforementioned products sere not safe and were unfit for the uses for which they were intended.

47. As a result of the foregoing breach of express warranties by the Defendants, and each of them, Plaintiff suffered injuries and damage as alleged herein.

FIFTH CAUSE OF ACTION

(Deceit - Cal. Civ. Code §§1709-1710)

48. Plaintiff incorporates by reference herein Paragraphs 1 through 27 as though fully set forth herein.

49. Defendants, and each of them, from the time that the aforementioned products were first manufactured, marketed and distributed, and up to the present, wilfully deceived Plaintiff by (1) making false and fraudulent misrepresentations to Plaintiff, her physicians and the general public, including but not limited to that said products were safe, fit and effective for implantation in the human system and exposure to silicone materials was not hazardous to the health of the recipient; and (2) concealing from the Plaintiff, her physicians and the general public, the true facts concerning said products, which facts the Defendants had a duty to disclose, including but not limited to the propensity to leak and bleed silicone and other toxic materials into the human system, the propensity to biodegrade in the human system and the propensity of the aforementioned products to cause serious injuries, including but not limited to the injuries suffered by Plaintiff as delineated herein.

50. At all times herein mentioned, Defendants, and each of them, conducted a sales and marketing campaign to promote the sale of breast implants and wilfully deceive Plaintiff, physicians and the general public as to the health risks and consequences of the aforementioned products when implanted into the human system. These representations were made directly by said Defendants, by sales representatives and other authorized agents of said Defendants and in publications and other written materials directed to physicians, medical patients and the public.

51. The foregoing representations by the Defendants, and each of them, were in fact false, in that the aforementioned products were not safe, fit and effective for implantation in the human system, exposure to silicone components was and continues to be hazardous to the health of Plaintiff, said products had a propensity to leak and bleed silicone and other toxic components in the human system and biodegrade within the human system and said products had a propensity to cause serious injuries to implant recipients, including but not limited to the injuries suffered by Plaintiff as delineated herein.

52. When Defendants made the foregoing misrepresentations, they knew them to be false and/or had no reasonable basis for believing them to be true.

53. The foregoing representations and concealment by Defendants, and each of them, were made and conducted with the intent to wilfully induce Plaintiff and/or her physicians to use the aforementioned products in breast reconstruction or augmentation.

54. In reliance on the false, fraudulent and/or wilful misrepresentations and concealment by the Defendants, and each of them, Plaintiff was induced to and did subject herself to the use of the aforementioned products. If Plaintiff had known of the true facts concealed by the Defendants, she would not have taken such action and risk. The reliance of Plaintiff on Defendants' misrepresentations and concealment was justified because said misrepresentations and concealment were made and conducted by individuals and entities who were in a position to know the true facts.

55. As a result of the foregoing deceitful conduct by the Defendants, and each of them, Plaintiff suffered injuries and damage as alleged herein.

SIXTH CAUSE OF ACTION

(Intentional Inflection of Emotional Distress)

56. Plaintiff incorporates by reference herein Paragraphs 1 through 27 and Paragraphs 49 through 53 as though fully set forth herein.

57. The Defendants actively promoted and marketed the aforementioned products to the Plaintiff, physicians and the public at large, with no regard for the health of the implant recipients or adequate warnings concerning these potentially dangerous health consequences, in the face of

knowledge to the contrary that the effects of said products were potentially severe, chronic disabling and permanent.

58. Based on the foregoing knowledge by the Defendants regarding the dangerous propensities of the aforementioned products, Defendants, and each of them, knew that use of said products would cause the recipients of said products extreme emotional distress on a long-term basis.

59. That the foregoing conduct of Defendants, and each of them, was callous, outrageous and amounted to a wilful, intentional and reckless disregard for the probability of causing Plaintiff to suffer anxiety, mental anguish and severe emotional and physical distress.

60. As a result of the foregoing conduct by the Defendants, and each of them, Plaintiff has suffered and will continue to suffer in the future, severe anxiety, worry, fright, mental and emotional pain, distress, anguish and emotional trauma.

SEVENTH CAUSE OF ACTION

(Loss of Consortium)

61. Plaintiff incorporates by reference herein Paragraphs 1 through 60 as though fully set forth herein.

62. At all times herein mentioned the male Plaintiff in this action was and now is the spouse of the female Plaintiff identified herein.

63. By reason of the injuries sustained by the female Plaintiff as alleged herein, her male spouse has been and will continue to be deprived of her consortium, society, comfort, protection, and service, thereby causing and continuing to cause said male Plaintiff grief, sorrow, mental anguish, emotional distress and pain and suffering.

EIGHTH CAUSE OF ACTION

(Market Share Liability - Pleaded In The Alternative)

(Product Defendants Only)

64. Plaintiff incorporates by reference herein Paragraphs 1 through 63 as though full set

forth herein.

65. Plaintiffs, after discovery is completed, may not be able to identify the implant and/or component part manufacturers responsible for her particular implants. In the event that said identification is not possible, Plaintiff intends to proceed, in the alternative, base don a market share theory of liability.

66. Those Defendants named herein who manufactured, distributed or sold silicone breast implants constituted a substantial share and/or percentage of the market share of said products.

67. Those Defendants named herein who manufactured, distributed or sold silicone or silica components for use in breast implants constituted a substantial share and/or percentage of the market share of said products.

68. Those Defendants named herein who manufactured, distributed or sold polyurethane or polyurethane foam products for use in silicone breast implants, constituted a substantial share and/or percentage of the market share of said products.

69. The aforementioned products were fungible and were produced from similar formulations of silicone and/or polyurethane components. Each breast implant manufactured and marketed by the Defendants herein contained the common component of silica and silicone and/or polyurethane, which caused Plaintiff's injuries herein. Notwithstanding minor differences in formulations, the harmful effects of silicone and/or polyurethane components are the same for each implant manufactured.

70. Plaintiff, through no fault of her own, may not be able to identify the producer of the particular breast implants and components used therein, due to the unavailability of appropriate medical records and/or lot histories kept by the Defendants, some of which are decades old and have been destroyed by the implant physicians or Defendants.

71. As a further, separate and distinct theory of causation, pleaded in the alternative, Plaintiff's injuries were caused by a defect common to all of the aforementioned products, and liability should be apportioned in accordance with the market share theory of liability.

NINTH CAUSE OF ACTION

(Medical Negligence - Physician Defendants Only)

72. Plaintiff incorporates by reference herein Paragraphs 1 through 23 as though fully set forth herein.

73. The physician Defendant(s) herein was/were the medical provider(s) who implanted the silicone breast implants in Plaintiff's body or advised her concerning the safety thereof.

74. At all times herein mentioned, the physician Defendant(s) was/were the agents of entities who manufactured the breast implants used by Plaintiff herein.

75. These Defendants, and each of them, were and held themselves out to be, knowledgeable in the implantation of silicone breast implants.

76. As physicians performing breast augmentation surgery, Defendant(s) knew, or in the exercise of reasonable care should have known, of the health hazards as previously delineated in this Master Complaint involved with silicone gel breast implants and/or silicone at the time they obtained Plaintiff's consent to implant them in her body.

77. Defendant(s) failed to inform Plaintiff of these known or reasonably knowable health hazards, and such conduct fell below the standard of reasonable medical practice.

78. Plaintiff became the patient of Defendant(s), who undertook to examine, inform, treat, diagnose, prognose, perform surgery on and otherwise render medical, hospital, nursing and other related services and care to Plaintiff.

79. At all times herein mentioned, Defendant(s) carelessly and negligently examined, informed, treated, diagnosed, prognosed, performed surgery on and otherwise rendered medical, hospital, nursing and other related services and care to Plaintiff.

80. From and after said time, Defendant(s) carelessly and negligently cared for, treated and operated on Plaintiff by the use of instrumentalities, machines and procedures, the exact nature of which is known to Plaintiff at this time and which instrumentalities, medicines and procedures were under the sole and exclusive control and custody of said Defendant(s).

81. As a result of the professional negligence and medical malpractice of Defendant(s), Plaintiff has suffered severe injuries and damage as alleged herein.

TENTH CAUSE OF ACTION

(Lack of Informed Consent and Battery)

(Physician Defendants Only)

82. Plaintiff incorporates by reference herein Paragraphs 1 through 23 as though fully set forth herein.

83. At all times herein mentioned, Defendant(s) was/were the medical doctor(s) and/or health care provider(s) who treated Plaintiff for the purpose of implanting silicone breast implants into Plaintiff.

84. At all times herein mentioned, the relationship between Defendant(s) and Plaintiff herein was fiduciary in nature, which imposed a duty upon Defendant(s) to fully disclose any and all potential problems, dangers, hazards and health risks inherently associated with silicone breast implants.

85. Defendant(s) failed to fully disclose the potential hazards, dangers, risks and health problems inherent to silicone breast implants and represented that silicone breast implants were completely safe for their intended use and would function without defect.

86. Said representations, in fact, were false and Defendant(s) knew that they were false and had knowledge of serious hazards to a woman's health when a silicone breast implant is placed in a woman's body as delineated in this Master Complaint.

87. The foregoing conduct of Defendant(s) constituted a battery on Plaintiff herein.

88. If Plaintiff had been adequately informed of this information, including but not limited to the risks, hazards, dangers and health problems associated with silicone and/or silicone breast implants, Plaintiff would not have consented to the surgery performed upon her by Defendant(s).

89. As a result of the foregoing conduct by Defendant(s), Plaintiff has suffered severe injuries and damages as alleged herein.

90. The conduct of Defendant(s) was wilful and intentional and done with fraud, oppression and malice against Plaintiff and with a conscious disregard of the rights of Plaintiff. Pursuant to California Code of Civil Procedure §425.13, Plaintiff is unable to assert punitive and/or exemplary damage claims against physicians in her Complaint. Based upon the allegations set forth

in this Master Complaint, Plaintiff will seek leave to amend her claims in the future to allege punitive damages under C.C.P. §415.13(a).

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For past and future general damages, according to proof;
2. For past and future medical and incidental expenses, according to proof;
3. For past and future loss of earnings and/or earning capacity, according to proof;
4. For punitive and exemplary damages in an amount to be determined at trial;
5. For prejudgment interest on all damages as is allowed by the laws of the State of California;
6. For past and future mental and emotional distress, according to proof;
7. For past and future loss of consortium, according to proof;
8. For past and future costs of suit incurred herein;
9. In the alternative, for damages based upon market share liability; and
10. For such other and further relief as this Court deems just and proper.

DATED: